

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Clifford E. Avery

v.

Civil No. 06-cv-448-SM


Director, Rhode Island
Department of Corrections, et al

O R D E R

The petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 is necessarily denied as the petition is untimely under 28 U.S.C. § 2244, and because it is a second or successive petition, over which this court has no jurisdiction. See 28 U.S.C. § 2244(b)(1) & (2). "Before a second or successive application permitted by [§2244] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Although transfer of a second or successive petition to the court of appeals is sometimes the preferable disposition, transfer is not mandated. Pratt v. United States, 129 F.3d 54 (1st Cir. 1997). Nothing in this petition warrants transfer rather than dismissal. Accordingly, the petition is dismissed for lack of jurisdiction. Petitioner remains free, of course, to seek authorization from the United States Court of Appeals for the First Circuit to file a second or successive petition.

SO ORDERED.

December 21, 2006



Steven J. McAuliffe
Chief Judge

cc: Clifford E. Avery, pro se
Aaron L. Wiesman, Esq.